application states, our review will be informed by our findings in the *Qwest 9-State Order*.[107] We find that Qwest, through the KPMG test and its declarations, provides sufficient evidence that its OSS in the application states are the same OSS as in the nine-state region. In particular, we use Colorado, which is the state previously approved in the *Qwest 9-State Order* with the most significant volumes, as an "anchor" state. Thus, where performance with low volumes in one of the application states yields inconclusive or inconsistent information regarding Qwest's compliance with the competitive checklist, we will analyze Qwest's performance in Colorado to make our determination.[108] We note that no commenter has suggested that we should not consider evidence of Qwest's Colorado OSS in this proceeding.

38. In reaching our conclusion that Qwest has demonstrated it provides nondiscriminatory access to its OSS, we rely on detailed evidence provided by Qwest in this proceeding. We base this determination on Qwest's actual performance in the three application states. Consistent with our past practice, we note that in the course of our review, we look for patterns of systematic performance disparities that have resulted in competitive harm or that have denied new entrants a meaningful opportunity to compete.[109] Isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.[110]

b. Pre-ordering

39. Based on the evidence in the record, we find, as did the state commissions, that Qwest demonstrates it provides carriers with nondiscriminatory access to its OSS pre-ordering functions.[111] Commenters raise issues related to the address validation function and loop qualification function, which are discussed below.

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[107] *See SBC Kansas/Oklahoma Order*, 16 FCC Rcd at 6253-6245, para. 35. Indeed, to the extent that certain issues have been previously briefed, reviewed and resolved in a prior section 271 proceeding, and absent new evidence or changed circumstances, an application for a related state should not be a forum for relitigating and reconsidering those issues. *Id.*

[108] As the Commission has found in past section 271 applications, performance data based on low volumes of orders or other transactions is not as reliable an indicator of checklist compliance as performance based on larger numbers of observations. It is thus not possible to place the same evidentiary weight upon – and to draw the same types of conclusions from – performance data where volumes are low, as for data based on more robust activity. *See, e.g., SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6254, para. 36. We note, however, that convincing commercial evidence of discriminatory treatment in a certain applicant state cannot be trumped by convincing evidence of satisfactory treatment in an "anchor state."

[109] *See Qwest 9-State Order*, 17 FCC Rcd at 26321-22, para. 37.

[110] *Id.*

[111] *See* New Mexico Commission Comments at 35; Oregon Commission Comments at 11; South Dakota Commission Comments at 4. *See generally* Appendices B, C, D, and E. We note that the Department of Justice expressed concerns about Qwest's ability to include Migrate-as-Specified in the next EDI software release, which is scheduled for April 7, 2003. Department of Justice Evaluation at 8 n.32. The Commission has not found that (continued....)

40. We disagree with WorldCom's allegation that Qwest's pre-order address validation query is unreliable. Specifically, WorldCom claims that if the telephone number that WorldCom enters is for a customer's second line, the address validation inquiry often will not return an address for that phone number and will reject the order.[112] The record shows that second lines are not linked to addresses in the PREMIS[113] database and, accordingly, competitive LECs should not be using PREMIS to retrieve a customer's address based on a customer's telephone number.[114] Qwest explains that customers should instead validate addresses in

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Migrate-as-Specified or TN Migration is necessary for checklist compliance. (TN migration means a carrier can place an order using only the customer's telephone number.)

112 WorldCom Comments at 15; WorldCom Reply 6-7. Similarly, we reject WorldCom's arguments relating to rejects occurring due to PREMIS/CRIS mismatches. *See* WorldCom Reply at 7-8; Letter from Lori E. Wright, Associate Counsel, Federal Advocacy, WorldCom to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 3 (filed April 10, 2003) (WorldCom Apr. 10 *Ex Parte* Letter); Letter from Lori Wright, Associate Counsel – WorldCom and Marc A. Goldman – Jenner & Block, LLC, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 5-6 (filed March 24 2003) (WorldCom Mar. 24 *Ex Parte* Letter). As we found in the *Qwest 9-State Order*, both Qwest retail and wholesale customers are affected by database inconsistencies and these inconsistencies do not rise to the level of checklist noncompliance. *See Qwest 9-State Order*, 17 FCC Rcd at 26336-38, para. 56. We take additional comfort from evidence in the record that Qwest and WorldCom have already resolved several issues regarding database mismatches. Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 Attach. A at 8-9 (filed April 3A 2003) (Qwest Apr. 3A *Ex Parte* Letter). We also reject WorldCom's argument that Qwest's problems with USOCs in Oregon are evidence of a systematic failure of Qwest's OSS. WorldCom Comments at 14-15; WorldCom Reply at 5-6. In support of the generalized claim of OSS failure, WorldCom recounts two incidents – one of which was resolved prior to the initial comment deadline. WorldCom Comments at 14-15; WorldCom Lichtenberg Decl. paras. 21-22. The other incident also has been resolved and affected only a small number of WorldCom orders. *See* Qwest Reply at 35-37. We find that these problems appear to be isolated incidents, and consistent with our 271 precedent, we find that such anecdotal evidence is not sufficient to warrant a finding of checklist noncompliance. *See, e.g., Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, Memorandum Opinion and Order, 17 FCC Rcd 12275, 12365-66, para. 184 (2002) (*Verizon New Jersey Order*). We also reject WorldCom's argument that Qwest's EDI documentation is inadequate because Qwest failed to provide WorldCom with "a table of valid class-of-service Universal Service Order Codes (USOCs) at the account level." WorldCom Mar. 24 *Ex Parte* Letter at 4-5. The record shows that competitive LECs are required to provide line level USOCs, not account level USOCs, when submitting LSRs. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 6. Furthermore, the record shows that Qwest directs competitive LECs to use the "USOC/FID Finder," which competitive LECs may access through Qwest's Wholesale Website, if a competitive LEC needs to identify a particular USOC. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 6. The USOC/FID Finder tool provides competitive LECs the ability to search by USOC or FID code, as well as by Product Family and obtain a list of USOCs associated with that product. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 6-7.

113 PREMIS is the Qwest database that competitors use to determine if a customer's address matches the address in Qwest's OSS. PREMIS is used to create a list of validated addresses that can be used to generate other pre-ordering and ordering transactions.

114 Qwest Reply at 38-39.

PREMIS by searching using the customer's address.[115] We find that this issue does not rise to the level of checklist noncompliance.

41. Based on the evidence in the record, we also conclude, as did the state commissions, that Qwest provides competitive LECs with access to loop qualification information in a manner consistent with the requirements of the *UNE Remand Order*.[116] Specifically, we find that Qwest provides competitors with access to all of the same detailed information about the loop that is available to itself and in substantially the same timeframe as any of its own personnel could obtain it.[117]

42. We reject AT&T's argument that Qwest denies competitive LECs necessary loop qualification information in Oregon.[118] AT&T states that Qwest's SGAT for Oregon, unlike the SGATs for New Mexico and South Dakota, does not contain Section 9.2.2.2.1.1 which gives competitive LECs the right to gain access to Qwest's outside plant facilities database, which includes information on the presence of copper feeder.[119] However, the record shows that Qwest has provided access to this database to competitive LECs even without the specific language in its SGAT.[120] Additionally, although we do not rely on it, the record shows that Qwest is in the process of amending its SGAT to include the language requested by AT&T.[121] Accordingly, we find that Qwest provides loop qualification information to competitive LECs in a nondiscriminatory manner.

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115 Qwest Reply at 38-39. In order for a customer's order to be accepted into Qwest's system, the customer's address on the order must match exactly with the address as it appears in the PREMIS database. *Id.*

116 *See* New Mexico Commission Comments at 35; Oregon Commission Comments at 11; South Dakota Commission Comments at 4. *See Qwest 9-State Order*, 17 FCC Rcd at 26340, para. 61 (2002); *UNE Remand Order*, 15 FCC Rcd 3696. The Commission's rules require Qwest to provide competitors all available information relevant to loop qualification in its databases or internal records, in the same time intervals that it is available to any Qwest personnel, regardless of whether Qwest retail personnel have access to such information. *UNE Remand Order*, 15 FCC Rcd at 3885-87, paras. 427-31. Qwest has exceeded the benchmark for unbundled loop qualification for both IMA-EDI and the IMA-GUI in each of the past 12 months in New Mexico, Oregon, and South Dakota. Qwest Williams Decl. at paras. 120-127.

117 *See Verizon Massachusetts Order*, 16 FCC Rcd at 9016-17, para. 54. Qwest Notarianni/Doherty Decl. at paras. 93-135.

118 AT&T Comments at 29-30; *see also* AT&T Reply at 13.

119 AT&T Comments at 29.

120 Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 2 (filed February 14C 2003) (Qwest Feb. 14C *Ex Parte* Letter). We further note that Qwest has made the option of obtaining information on the presence of copper feeder available to competitive LECs in Oregon and elsewhere since August 2001. Qwest Reply at 41. AT&T does not allege that it requested access to this information and was denied access by Qwest.

121 Qwest Feb. 14C *Ex Parte* Letter at 2; Qwest Reply at 41.

c. Ordering

43. In this section, we address Qwest's ability to provide competing carriers with access to the OSS functions necessary for placing wholesale and retail orders. Based on the evidence in the record, we find, as did the state commissions, that Qwest demonstrates it provides nondiscriminatory access to its ordering systems.[122] Order flow-through is discussed in this section while other ordering issues related to documentation are discussed in change management, below.

44. The Commission has looked to order flow-through as a potential indicator of a wide range of problems that underlie a determination of whether a BOC provides nondiscriminatory access to its OSS.[123] Flow-through measures the percentage of orders that pass through an incumbent's ordering systems without the need for manual intervention. The Commission has not relied upon flow-through rates as the sole indicator of nondiscrimination, however, and thus has not limited its analysis of a BOC's ordering process to a review of its flow-through performance data.[124]

45. Although Qwest failed to reach benchmarks with respect to electronic flow-through metrics in Oregon and New Mexico,[125] we find that the misses are not competitively

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[122] Eschelon's claim that day-of-cut customer outages are not captured by performance metric OP-5 does not rise to the level of checklist non-compliance. Eschelon Comments at 2. As we found in the *Qwest 9-State Order*, disputes about the exact definitions of performance metrics are best addressed through the states and the LTPA process. *See Qwest 9-State Order*, 17 FCC Rcd at 26369, para. 105 n.392. We note Qwest's performance disparities for OP-5 (New Service Installation Quality, UNE-P) in Oregon. In Oregon, competitive LECs' New Service Installation Quality for UNE platform is 89.41% versus 93.58% for Qwest retail, on average, for September 2002 to January 2003. However, the record shows that competitive LEC performance under this metric is improving generally, and the difference in performance between competitive LECs and Qwest retail is diminishing. Therefore, we do not find these performance disparities to be competitively significant. Additionally, we note that Qwest has met the benchmark for this metric for 3 of the 5 months reviewed in this application. Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 2 (filed March 14A 2003) (Qwest Mar. 14A *Ex Parte* Letter); Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 2 (filed March 6B 2003) (Qwest Mar. 6B *Ex Parte* Letter).

[123] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4035, para. 162.

[124] *See Qwest 9-State Order*, 17 FCC Rcd at 26369-70, para. 106.

[125] Qwest failed to reach and maintain benchmarks with respect to several electronic flow-through measures for several of the most recent months. However, as noted below, Qwest's performance misses are due to either low volumes or are not by significant percentages. For example, in New Mexico, Qwest missed the performance measurement PO-2B-1 (Electronic Flow-Through for all Eligible LSRs Received via GUI, LNP) with relatively low average total flow-through rates – ranging from 33% to 90% from October 2002 to January 2003. However, monthly competitive LEC volumes ranged from only 2-10 competitive LEC orders per month between October 2002 and January 2003. In September 2002, competitive LEC volume was 0. However, in Colorado, with greater competitive LEC volumes, Qwest met performance measurement PO-2B-1 (Electronic Flow-Through for all Eligible LSRs Received via GUI, LNP) with an average flow-through rate of 96.67% from September 2002 to January 2003. In Oregon, Qwest missed the performance measurement PO-2B-2 (Electronic Flow-Through for all (continued....)

significant because they either reflect isolated cases, low competitor volumes, or a narrow margin for the miss.[126] As the Commission has previously determined, low competitor order volumes can cause seemingly large variations in the monthly performance data.[127] Furthermore, Qwest states that the results of the KPMG test (where Qwest achieved 100% flow-through rates for LNP LSRs) show that Qwest is capable of adequate flow-through.[128] Accordingly, we do not find that these misses rise to the level of checklist noncompliance.

d. Maintenance and Repair

46. Based on the evidence in the record, we conclude, as did the state commissions, that Qwest provides nondiscriminatory access to its maintenance and repair OSS functions.[129]

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Eligible LSRs Received via EDI, LNP) with flow-through rates ranging from 60% to 89% from September 2002 to January 2003. Monthly competitive LEC volumes ranged from 6-19 for this measure. In New Mexico, Qwest missed the performance measurement PO-2B-2 (Electronic Flow-Through for all Eligible LSRs Received via EDI, LNP) with flow-through rates ranging from 0% to 50% from September 2002 to January 2003. Monthly competitive LEC volumes ranged from 2-6 for this measure. However, in Colorado, with greater competitive LEC volumes, Qwest met performance measurement PO-2B-2 (Electronic Flow-Through for all Eligible LSRs Received via EDI, LNP) with an average flow-through rate of 96.99% from September 2002 to January 2003. In Oregon, Qwest missed the performance measurement PO-2B-1 (Electronic Flow-Through for all Eligible LSRs Received via GUI, LNP) with flow-through rates ranging from 91% to 97% from September 2002 to January 2003. However, in Colorado, with greater competitive LEC volumes, Qwest met performance measurement PO-2B-1 (Electronic Flow-Through for all Eligible LSRs Received via GUI, LNP) with an average flow-through rate of 96.67% from September 2002 to January 2003. In Oregon, Qwest missed the performance measurement PO-2B-1 (Electronic Flow-Through for all Eligible LSRs Received via GUI, POTS Resale) with flow-through rates ranging from 89% to 94% from October 2002 to January 2003. Thus, Qwest only missed the 95% benchmark by 1% to 6%. Qwest Application App. A, Tab 33, Declaration of Michael G. Williams (Qwest Williams Decl.), paras. 227-228. In Oregon, Qwest missed the performance measurement PO-2B-1 (Electronic Flow-Through for all Eligible LSRs Received via GUI, UNE-P POTS) with flow-through rates ranging from 73% to 92% from September 2002 to January 2003. We note that Qwest only missed the September benchmark by less than 3%. Qwest Williams Decl., para. 233. In addition, while Qwest missed the overall benchmark in November, Qwest met the benchmark for three different competitive LECs that submitted nearly 200 UNE-P LSRs via IMA-GUI during November. Qwest Williams Decl., para. 233.

126 *See generally* Appendices B, C, D, and E. Furthermore, Qwest's performance on these flow-through metrics is in the range we approved in the *Qwest 9-State Order*. *See Qwest 9-State Order*, 17 FCC Rcd at 26369-70, para. 106. We reject WorldCom's generalized complaints regarding Qwest's failure to meet regionwide Electronic Flow-Through performance metrics. *See* WorldCom Comments at 18; WorldCom Comments App. Declaration of Sherry Lichtenberg, para. 1 (WorldCom Lichtenberg Decl.). We do not find WorldCom's complaints competitively significant given the absence of any evidence documenting manual handling deficiencies in the application states.

127 *See Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9090, para. 140 n.494 (2002) (*BellSouth Georgia/Louisiana Order*).

128 Qwest Williams Decl. at paras. 221-223.

129 *See, e.g.*, New Mexico Commission Comments at 35-36 (recommending that the Commission find that Qwest has demonstrated it provides nondiscriminatory access to OSS in New Mexico, but not specifically addressing maintenance and repair); Oregon Commission Comments at 11-12, 17 (recommending that the Commission approve
(continued….)

We find that Qwest has "deployed the necessary interfaces, systems, and personnel to enable requesting carriers to access the same maintenance and repair functions" that Qwest provides itself.[130] Competing carriers have access to these functions in substantially the same time and manner as Qwest's retail operations, and with an equivalent level of quality.[131] Qwest demonstrates that competitive LECs have equivalent access to the same information as Qwest's retail representatives and the same access to maintenance and repair functionality as Qwest's retail operations.[132] Below, we briefly discuss how the commercial data and the findings of KPMG's third-party test demonstrate that Qwest's systems are functional and provide service to competitive LECs in a nondiscriminatory manner.

47. *Commercial Data.* We conclude that the commercial data demonstrate that Qwest addresses trouble complaints for competing carriers in substantially the same time and manner that it addresses complaints from its own retail customers.[133] We base our conclusion on the fact that, from September 2002 to January 2003, Qwest missed few parity performance measures.[134] Although there are minor problems with some of Qwest's trouble rate[135] metrics in Oregon and South Dakota, these are not significant enough to detract from our conclusion that

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Qwest's application in Oregon, but not specifically addressing maintenance and repair); South Dakota Commission Comments at 5-6, 16 (recommending that the Commission find that Qwest has met the 14-point checklist, but not specifically addressing maintenance and repair). We reject Eschelon's argument that Qwest has an unreasonably high and rising level of major network outages. Eschelon charges that competitors are adversely affected by these outages, while Qwest often is not likewise affected by the same outages. *See* Eschelon Reply Comments at 4. Qwest responds that none of the troubles identified by Eschelon occurred in the three application states. *See* Letter from R. Hance Haney, Executive Director – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 4 (filed March 14B, 2003) (Qwest Mar. 14B *Ex Parte* Letter). Accordingly, we find that Eschelon's comments are not applicable to the states under consideration in this proceeding.

130 *Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para. 211.

131 *Id.* at 4067, para. 211.

132 *See Id.* at 4069-70, para. 215. We reject any claims that Qwest must provide an application-to-application maintenance and repair interface. The Commission raised concerns in the *BellSouth Second Louisiana Order* about the importance of integrating maintenance and repair databases. *BellSouth Second Louisiana Order*, 13 FCC Rcd at 20694-96, paras. 149-52. More recently, however, the Commission found that "a BOC is not required, for the purpose of satisfying checklist item 2, to implement an application-to-application interface for maintenance and repair functions – provided it demonstrates that it provides equivalent access to its maintenance and repair functions in another manner." *Bell Atlantic New York Order*, 15 FCC Rcd at 4068, para. 215; *SWBT Texas Order*, 15 FCC Rcd at 18458 n.565.

133 *Bell Atlantic New York Order*, 15 FCC Rcd at 4072, paras. 220-22.

134 Qwest's overall performance in promptly clearing out-of-service orders, clearing troubles in a timely fashion, responding to customer calls on a timely basis, restoring service, and meeting repair appointments indicates that Qwest performs these functions in substantially the same time and manner for both competitive LECs and Qwest's retail customers. *See generally* Appendices B, C, D, and E.

135 MR-8 (Trouble Rate).

Qwest provides nondiscriminatory OSS access. For example, from September 2002 to January 2003, Qwest missed parity all five months for its UNE-platform Centrex Trouble Rate in Oregon[136] and South Dakota.[137] However, the five-month average trouble rates for competitive LECs in both states were not competitively significant,[138] particularly given Qwest's generally good performance in repair measurements.[139] Although in Oregon Qwest achieved parity in only one of the five months for its DS1 Trouble rate,[140] Qwest's performance has improved over time,[141] particularly when the no trouble found ("NTF") trouble reports are excluded from the calculations.[142] Furthermore, competitive LECs' monthly volumes for this metric were relatively low.[143] Qwest's failure to reach parity in Oregon in any of the five months for its ISDN Primary Trouble Rate[144] is offset by the fact that all five months were at 1.10% or less for competitive

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136 MR-8 (Trouble Rate, UNE-P Centrex) (missed parity Sept., Oct., Nov., Dec., 2002, and Jan., 2003). In Oregon, competitive LECs' trouble rate for UNE-P Centrex was 0.65% versus 0.30% for Qwest, on average, from September 2002 to January 2003. Monthly competitive LEC volumes ranged from 7,853 to 16,274 for this measure. *See* Letter from C. Jeffrey Tibbels, Esq., Hogan & Hartson, L.L.P., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11, Attach. (filed February 28C, 2003) (Qwest Feb. 28C *Ex Parte* Letter).

137 MR-8 (Trouble Rate, UNE-P Centrex) (missed parity Sept., Oct., Nov., Dec., 2002, and Jan., 2003). In South Dakota, competitive LECs' trouble rate for UNE-P Centrex was 0.53% versus 0.15% for Qwest, on average, from September 2002 to January 2003. Monthly competitive LEC volumes ranged from 8,049 to 10,868 for this measure. *See* Qwest Feb. 28C *Ex Parte* Letter, Attach.

138 The five-month average trouble rates for competitive LECs in both Oregon and South Dakota were under 1%. *See* Qwest Feb. 28C *Ex Parte* Letter, Attach.

139 *See* Qwest Application App. A, Tab 33, Declaration of Michael G. Williams, paras. 345, 352 (Qwest Williams Decl.).

140 MR-8 (Trouble Rate, DS1) (missed parity Sept., Oct., Nov., and Dec., 2002). In Oregon, competitive LECs' trouble rate for DS1 was 4.46% versus 1.23% for Qwest, on average, from September 2002 to January 2003. Monthly competitive LEC volumes ranged from 159 to 180 for this measure. *See* Qwest Feb. 28C *Ex Parte* Letter, Attach.

141 Competitive LECs' trouble rate for DS1 went from 5.66% in September 2002 (versus 1.44% for Qwest) to 4.00% in December 2002 (versus 1.14% for Qwest) and 1.11% in January 2003 (versus 1.28% for Qwest). *See* Qwest Feb. 28C *Ex Parte* Letter, Attach.

142 When the NTF trouble reports are excluded from the calculations, competitive LECs' trouble rate for DS1 went from 5.66% in September 2002 (versus 0.94% for Qwest) to 2.29% in December 2002 (versus 0.79% for Qwest). *See* Qwest Feb. 28C *Ex Parte* Letter, Attach.

143 Monthly competitive LEC volumes for the DS1 trouble rate ranged from 159 to 180 versus 26,610 to 26,978 for Qwest. *See* Qwest Feb. 28C *Ex Parte* Letter, Attach.

144 MR-8 (Trouble Rate, ISDN primary) (missed parity Sept., Oct., Nov., Dec., 2002, and Jan., 2003). In Oregon, competitive LECs' trouble rate for ISDN primary was 0.58% versus 0.02% for Qwest, on average, from September 2002 to January 2003. Monthly competitive LEC volumes ranged from 547 to 641 for this measure. *See* Qwest Feb. 28C *Ex Parte* Letter, Attach.

LECs,[145] and a comparison of wholesale and retail results averaged a difference of only 0.56%.[146] Finally, although Qwest achieved parity only in December in Oregon for its Business Trouble Rate,[147] the five-month average wholesale trouble rate was 0.87%--only 0.20% higher than the retail trouble rate.[148] We find such disparity to be competitively insignificant.

48. We also note that the record reflects only one competitor complaint regarding Qwest's maintenance and repair performance.[149] We reject WorldCom's assertion that Qwest's failure to meet some performance metrics on a regionwide basis, including some related to maintenance and repair, means that Qwest's OSS is not ready to support meaningful competition at commercial volumes.[150] Most of the regionwide maintenance and repair metrics that WorldCom cites are not problems in the three application states.[151] To the extent performance disparities exist in the application states, we have discussed these above.[152]

49. *Third Party Test.* The results of the Third Party Test demonstrate that Qwest is capable of providing competing LECs with maintenance and repair services in a nondiscriminatory manner.[153] As we discussed in the *Qwest 9-State Order*,[154] although KPMG

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[145] *See* Qwest Feb. 28C *Ex Parte* Letter, Attach. *See also* Qwest Williams Decl., para. 377.

[146] *See* Qwest Feb. 28C *Ex Parte* Letter, Attach. *See also* Qwest Williams Decl., para. 459.

[147] MR-8 (Trouble Rate, Business) (missed parity Sept., Oct., Nov., 2002, and Jan., 2003). In Oregon, competitive LECs' trouble rate for Business was 0.87% versus 0.67% for Qwest, on average, from September 2002 to January 2003. Monthly competitive LEC volumes ranged from 8,310 to 11,019 for this measure. *See* Qwest Feb. 28C *Ex Parte* Letter, Attach.

[148] *See* Qwest Feb. 28C *Ex Parte* Letter, Attach. *See also* Qwest Williams Decl., para. 459.

[149] *See* WorldCom Comments at 18.

[150] WorldCom Comments App. Declaration of Sherry Lichtenberg, para. 32, Attach., MR-3C (Out of Service Cleared w/in 24 hours, N/D, Line sharing), MR-4A (All Troubles Cleared w/in 48 hours, D w/in MSAs, Line Sharing), MR-4C (All Troubles Cleared w/in 48 hours, N/D, Line Sharing), MR-5A (All Troubles Cleared w/in 4 hours, Interval Zone One, Unbundled Loop DS1 Capable), MR-6A (Mean Time to Restore, D w/in MSAs, Line Sharing), MR-6C (Mean Time to Restore, N/D, Line Sharing), MR-6D (Mean Time to Restore, Interval Zone One, Unbundled Loop, DS1 Capable), MR-7A (Repair Repeat Report Rate, D w/in MSAs, UNE-P (POTS)), MR-7C (Repair Repeat Report Rate, N/D, UNE-P (POTS)), MR-8 (Trouble Rate, UNE-P (Centrex)), MR-8 (Trouble Rate, Line Sharing), MR-8 (Trouble Rate, UDIT Above DS1 Level), MR-8 (Trouble Rate, Unbundled Loop, DS1 Capable), MR-8 (Trouble Rate, Unbundled Loop, ISDN Capable), MR-8 (Trouble Rate, Unbundled Loop, E911).

[151] *See generally* Appendices B, C, D, and E. *See also* Qwest Reply at 41-42 (arguing that regionwide performance results cannot overcome the fact that Qwest satisfies the performance measures in the three application states). *See also* Qwest Reply at 42-44, App. Tab 3, Reply Declaration of Michael G. Williams, paras. 5-11 (arguing that the regionwide metrics issues WorldCom singles out do not equate to competitively significant differences).

[152] The metric WorldCom cites that was a problem in Oregon and South Dakota is the UNE-platform Centrex Trouble Rate. *See* paragraph 47, *supra*.

[153] *Qwest 9-State Order*, 17 FCC Rcd at 26397-98, para. 155.

identified some issues with Qwest's trouble reporting process during its regionwide review, none of these issues is competitively significant.

e. Billing

50. Based on the evidence in the record, we find, as did the state commissions, that Qwest provides nondiscriminatory access to its billing functions. The Commission has established in past section 271 orders that, as a part of its OSS showing, a BOC must demonstrate that competing carriers have nondiscriminatory access to its billing systems.[155] In particular, BOCs must provide two essential billing functions: (1) complete, accurate, and timely reports on the service usage of competing carriers' customers; and (2) compete, accurate, and timely wholesale bills.[156] Wholesale bills are issued by incumbent LECs to collect compensation for competitive LEC wholesale inputs, such as unbundled network elements used by competitive LECs to provide service to their end users.[157] These bills are usually generated on a monthly basis, and allow competitors to monitor the costs of providing service.[158] Based on the evidence in the record, we find, as did the state commissions, that Qwest provides nondiscriminatory access to its billing systems.[159] We find that Qwest complies with its obligation to provide complete, accurate, and timely bills and that Qwest's performance on the relevant measurements satisfies the parity or benchmark standards, with few exceptions.[160]

51. We reject WorldCom's allegations that the codes used by Qwest to identify services in the Daily Usage Feeds ("DUF") are incomplete and inaccurate. Specifically, WorldCom alleges that Qwest either includes too much information, too little information, or

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154 *Qwest 9-State Order*, 17 FCC Rcd at 26397-99, paras. 155-57.

155 *See Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

156 *Id.*

157 *Id.*

158 *Id.*

159 *See* New Mexico Commission Comments at 35; Oregon Commission Comments at 11; South Dakota Commission Comments at 4.

160 We note Qwest's performance disparities for BI-3A (Adjustments for Errors, UNEs and Resale) in Oregon. In Oregon, competitive LECs' billing accuracy for BI-3A is 84.23% versus 99.18% for Qwest retail, on average, from September 2002 thru January 2003. However, BI-3A reflects credits for billing disputes which may have occurred in months outside of the application period. Because of this mismatch between the month that the credit occurred and the month that is being billed for, we have previously relied on other billing metrics, if available. *See Qwest 9-State Order*, 17 FCC Rcd at 26382, para. 126 n.470 and n.471. Qwest's performance is excellent under BI-5A and BI-5B - billing metrics which were adopted subsequent to the *Qwest 9-State Order* and are patterned after the performance metrics adopted by Verizon subsequent to the billing problems noted in our *Verizon Pennsylvania Order*. We also note that Eschelon alleges Qwest's billing accuracy deteriorated in 2002, but Eschelon only produces evidence of billing disputes in Utah, which is not an application state. Eschelon Reply Ex. 47 at 4. Without specific evidence of billing problems in the application states, we do not find that these allegations warrant a finding of checklist noncompliance.

misclassifies the services in the DUF.[161] However, the record shows that Qwest is meeting industry standards for DUF information.[162] Additionally, the record shows that when information is missing, the information was not recorded by the switch – which occurs in rare situations for both the competing LECs as well as for Qwest.[163] Given that the DUF conforms to industry guidelines and the information is provided in a nondiscriminatory manner, we do not find that the problems alleged by WorldCom rise to the level of checklist noncompliance.

52. We reject Eschelon's argument that Qwest charged Eschelon incorrectly for DS1 capable loops because the charges do not reflect the price reductions and modifications that Qwest voluntarily made effective January 22, 2003.[164] The record shows that Qwest did implement these voluntary reductions and competitive LECs were back-credited the difference in rates to the effective date.[165]

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[161] First, WorldCom argues that Qwest uses different codes for different "pay per use" services, which makes it difficult for WorldCom to bill these services. WorldCom Reply at 11; WorldCom Mar. 24 *Ex Parte* Letter at 10-11. Second, Qwest sometimes transmits a rate for "pay per use" calls, which WorldCom's systems are not designed to capture, as this information is not needed by WorldCom. WorldCom Reply at 12. Third, WorldCom alleges that the DUF does not always include the "bill to" number. *Id.* Finally, WorldCom alleges that directory assistance completed calls (DACC) are erroneously marked as collect calls. *Id.* WorldCom has not indicated, however, that the DACC issue has emerged in any of the Application states. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 15; WorldCom Mar. 24 *Ex Parte* Letter at 10-11. *See also* WorldCom Apr. 10 *Ex Parte* Letter at 6 (stating that competitive LECs receive from Qwest incorrectly formatted records for long duration calls); *but see* Letter from Melissa Newman, Vice President – Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 2 (filed April 11A, 2003) (Qwest Apr. 11A *Ex Parte* Letter) (stating that less than 0.02% of all WorldCom records were affected by this issue).

[162] Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 (filed March 10A 2003) (Qwest Mar. 10A *Ex Parte* Letter); *see also* Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 14-15. Furthermore, the record indicates that Qwest is providing competitive LECs the necessary rate class information and adequate information regarding its "I CALLED" feature. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 16-17.

[163] Qwest Mar. 10A *Ex Parte* Letter at 2.

[164] Eschelon Reply at 3.

[165] *See* Qwest Mar. 14B *Ex Parte* Letter at 3. "[P]rior to February 10, 2003, competitive LECs were charged $579.75 for DS1-capable loops with or without testing. After February 10, 2003, these same loops were priced at $320.41 for DS1-capable loops with testing and $124.67 for such loops without testing." *Id.* The record shows that non-recurring charges for DS1 installation in Oregon were changed effective January 22, 2003. Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 1 (filed Apr. 3B 2003) (Qwest Apr. 3B *Ex Parte* Letter). The record also shows that the new rates were implemented in the CRIS billing system on February 10, 2003. *Id.* Competitive LECs were notified that orders generated between January 22nd and February 10th would be back-credited the difference between the two rates. *Id.* The calculations for the appropriate back-billing were completed on April 2, 2003 and will appear on the April bill. Qwest Apr. 3B *Ex Parte* Letter at 1.

53. WorldCom alleges for the first time on March 24, 2003 that Qwest rejects orders for end-users with dial-up access to certain ISPs.[166] We conclude that this issue only relates to an insignificant number of WorldCom orders in Qwest's entire region. We do not find this to be competitively significant in the states that are the subject of this application.[167] Moreover, while we do not rely on it, we note that, as of March 13, 2003, Qwest notified competitive LECs that it had revised its processes to not reject conversions for customers of the ISP regardless of any unique billing arrangement.[168]

f. Change Management

54. As the Commission stated in the *Qwest 9-State Order*, the Commission reviews the BOC's change management procedures to determine whether these procedures afford an efficient competitor a meaningful opportunity to compete by providing sufficient access to the BOC's OSS.[169] Based on the evidence in the record, we conclude that Qwest provides an efficient competitor a meaningful opportunity to compete by providing sufficient access to its OSS.

55. We reject WorldCom's and Eschelon's argument that Qwest provides such poor documentation to competitors about its systems that it must fail checklist item 2.[170] Specifically, WorldCom argues that Qwest has rejected WorldCom orders because Qwest's flawed

[166] WorldCom Mar. 24 *Ex Parte* Letter at 11-12. WorldCom states that it first learned of this issue when another competitive LEC filed a complaint in Minnesota in late February. *Id.* at 11.

[167] Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 17 (stating that the number of accounts affected does not represent a significant percentage of WorldCom's conversions); Qwest Apr. 3A *Ex Parte* Attach. A14 at 1 (*citing confidential version*).

[168] Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 17.

[169] *See Qwest 9-State Order*, 17 FCC Rcd at 26384-26385, para. 132 (2002).

[170] WorldCom Comments at 17-18; WorldCom Reply at 2-5; WorldCom Apr. 10 *Ex Parte* Letter at 2 n.1; WorldCom Mar. 24 *Ex Parte* Letter at 1-11. Eschelon states that it is in the process of implementing EDI and agrees with the concerns expressed by WorldCom. Eschelon Reply at 4. However, Eschelon does not provide specific examples of problems implementing EDI in the application states. *See* Qwest Mar. 14B *Ex Parte* Letter at 3. Additionally, in its Reply Comments, Eschelon complained that on January 21, 2003, when Eschelon provisioners attempted to order loops using the normal process, Eschelon encountered an unanticipated up-front edit that stopped the orders from going through. Eschelon Reply at 3. The record indicates that as a result of a problem related to Qwest's January 18, 2003 IMA Release 11.1, Eschelon and three other competitive LECs were not able to submit LSRs via IMA for DS-1 Capable loops for three weeks. Eschelon Reply at 3; Qwest Mar. 14B *Ex Parte* Letter at 2. In response, Qwest advised Eschelon and the three other affected competitive LECs to submit orders for DS-1 Capable Loops via facsimile between January 18 and February 7, 2003. Qwest Mar. 14B *Ex Parte* Letter at 2. During this period, Eschelon generated 10 LSRs for DS-1 Capable loops. Qwest Mar. 14B *Ex Parte* Letter at 2. The record indicates that Qwest implemented a fix which allowed Eschelon and the other competitive LECs to submit LSRs via IMA for DS1-capable loops beginning on February 10, 2003. Qwest Mar. 14B *Ex Parte* Letter at 2.

documentation left WorldCom unable to obtain the feature information it needs to place orders.[171] We find that the record shows that other competitive LECs have been able to successfully develop an EDI interface for ordering UNE-platform and resale POTS orders using Qwest's documentation and technical assistance.[172] First, the record shows that 8 competitive LECs have certified and used their EDI interfaces to provide either UNE-platform or resale POTS orders, both of which products would typically include feature detail in the orders.[173] Second, AT&T conducted a trial for UNE-platform orders in Minnesota in 2001 which showed manual reject rates (PO-4B-1) of 3.80% and auto reject rates (PO-4B-2) of 0.47% during Phase I of the trial.[174] Third, the record shows that HP (the pseudo-competitive LEC) was able to successfully develop an EDI interface during the KPMG test.[175] We note that problems such as those raised by WorldCom are consistent with those competitive LECs encounter when building a new system. In addition, Qwest has worked to assist WorldCom with its efforts to develop and test its EDI interfaces for UNE-platform POTS and other products by, for example, conducting weekly EDI

[171] WorldCom Comments at 9-11; WorldCom Reply at 2-4; WorldCom Mar. 24 *Ex Parte* Letter at 2-4. WorldCom contends that between February 1, 2003 and March 21, 2003, 72% of its orders rejected and 64% of those rejects were related to feature activity. Letter from Lori Wright, Associate Counsel – WorldCom, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 1 (filed April 1, 2003) (WorldCom Apr. 1 *Ex Parte* Letter). The record shows that WorldCom's order reject rate improved to 53% for the week beginning March 22, 2003. WorldCom Apr. 1 *Ex Parte* Letter at 1-2; *see also* WorldCom Apr. 10 *Ex Parte* Letter (later reporting decreasing rate for rejects related to feature activity). As noted below, when WorldCom modified its software to fix this problem its reject rate related to feature activity declined to 12%. Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 2 (filed April 8C, 2003) (Qwest Apr. 8C *Ex Parte* Letter); *see also* Letter from Donna Sorgi, Vice President – Federal Advocacy, WorldCom, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 1-2 (filed April 2, 2003) (WorldCom Apr. 2 *Ex Parte* Letter).

[172] *See* Qwest Apr. 3A *Ex Parte* Letter at 2. *See also* Qwest Apr. 11A *Ex Parte* Letter at 1 n.2; Letter from Melissa Newman, Vice President – Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 and Att. A (filed April 14A, 2003) (stating that a UNE-P competitive LEC, New Access, has acknowledged that it is able to submit residential orders via EDI without converting or modifying the data it receives during the pre-order process and was able to develop its EDI interface on its own using Qwest's documentation). *But see* WorldCom Apr. 10 *Ex Parte* Letter at 4.

[173] Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 1.

[174] Qwest Apr. 8C *Ex Parte* Letter at 2 & Attach. A – Exhibit JFF-UNE-P-3 at 1; Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 (filed April 11, 2003) (Qwest Apr. 11B *Ex Parte* Letter); *but see* Letter from Richard E. Young, Counsel for AT&T to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 (filed April 10, 2003) (AT&T Apr. 8 *Ex Parte* Letter); Letter from Richard E. Young, Counsel for AT&T to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 (filed April 11, 2003) (AT&T Apr. 11 *Ex Parte* Letter).

[175] Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 5.

implementation meetings between Qwest staff and WorldCom staff to resolve questions raised by WorldCom.[176]

56. We note that some of these issues were raised by AT&T during the first Qwest section 271 application, such as the organization of feature information on the CSR for multi-line accounts, and therefore, WorldCom should have been aware of the unique aspects of Qwest's EDI as it was developing its own EDI interface.[177] Thus, we do not find that the problems discussed below indicate that Qwest's documentation is so flawed as to pose a barrier to competitive entry. Moreover, the record shows that Qwest's documentation was reviewed during the KPMG test and 31 competitive LECs have successfully used Qwest's documentation on a commercial basis to develop their EDI interfaces.[178] Furthermore, the Commission, in the *Qwest 9-State Order*, approved the same EDI at issue in this application, concluding that "Qwest provides sufficient documentation to allow competitive LECs to design their OSS interfaces."[179]

57. With regard to WorldCom's allegation that Qwest has refused to announce its documentation problems to other competitive LECs, the record shows that Qwest's change management procedures include disclosure of trouble found in production to other affected competitive LECs.[180] In the following paragraphs, we examine in detail WorldCom's specific claims regarding (1) order rejects resulting from WorldCom's inability to obtain the feature information it needs from Qwest's CSRs to place orders, (2) order rejects resulting from incomplete address information on Qwest's CSRs, and (3) problems relating to CSRs that have not been updated accurately.

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[176] Qwest Apr. 3A *Ex Parte* Letter at 3-4. We therefore reject WorldCom's arguments that Qwest's interfaces necessitate a process of "coding by reject." WorldCom Apr. 2 *Ex Parte* Letter at 2. The record shows that Qwest has made itself available to competitive LECs through its production support process and by providing other post-production technical assistance to WorldCom and other competitive LECs that are in production. Qwest Apr. 3A *Ex Parte* Letter at 3-4. In addition, many of the problems of which WorldCom complains now may have been encountered and resolved during a full Controlled Production phase. Qwest Mar. 20A *Ex Parte* Letter. *But see* Letter from Donna Sorgi, Vice President – Federal Advocacy, WorldCom, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at n.1 & Attach. (filed March 27, 2003) (WorldCom Mar. 27 *Ex Parte* Letter) (showing that Qwest certified that WorldCom's testing was sufficient and was complete); Qwest Apr. 3A *Ex Parte* Letter, Attach. A6 at 1 (*citing confidential version*) (Qwest's response). Qwest (and other BOCs) generally require competitive LECs to undergo a test period before launching their interface with the BOC. In this case, WorldCom requested and received authorization for a limited test period. Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 1 (filed March 20A 2003) (Qwest Mar. 20A *Ex Parte* Letter).

[177] *See* AT&T Qwest I Reply filed in the Qwest I docket, WC Docket No. 02-148 at 25-26; *see also Qwest 9-State Order*, 17 FCC Rcd at 26335 para. 54.

[178] Qwest Feb. 14C *Ex Parte* Letter at 1.

[179] *See Qwest 9-State Order*, 17 FCC Rcd at 26391-92, para. 144; Qwest Reply at 25.

[180] Qwest Reply at 29. Additionally, although we do not rely on it, the record shows that WorldCom's change request that Qwest adopt a single source of EDI documentation is currently being addressed through the change management process. Qwest Reply at 29.

58. *Feature Information on Customer Service Records.* We reject WorldCom's arguments that (1) undocumented differences between single and multiple line accounts[181] and (2) out-of-sequence feature detail on multi-line CSRs[182] pose a barrier to competitive entry in the application states. Furthermore, we reject WorldCom's argument that Qwest's failure to provide on many CSRs area codes for "forward to" numbers that competitive LECs need to order call forwarding led to a high reject rate for WorldCom's orders.[183] Specifically, WorldCom argues that Qwest fails to include area codes for "forward to" numbers on the CSR, which are necessary to prevent WorldCom's order from being rejected.[184] However, the record shows that an order will not be rejected if competitive LECs use the customer's area code as the area code for the "forward to" number.[185] We take additional comfort from Qwest's statements in the record that it is addressing this issue through its change management process.[186] Thus, we do not find the absence of the area code for "forward to" numbers on the CSR to be competitively significant.

59. *Rejects Related to Addresses.* We reject WorldCom's argument that Qwest should not require competitive LECs to provide Customer Address Location Area ("CALA")[187]

[181] WorldCom argues that Qwest's documentation states that the telephone number (TN) is located immediately following the USOC and that WorldCom programmed its systems only to retrieve features (through its USOC) that are immediately followed by a TN. WorldCom Mar. 24 *Ex Parte* Letter at 2-4. However, Qwest states that the TN field immediately following the USOC is clearly labeled an "optional" field in the EDI documentation, meaning that a feature may appear on the CSR without the TN. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 4.

[182] We reject WorldCom's argument that Qwest fails to disclose that Qwest's CSRs for multi-line accounts are formatted out-of-sequence, meaning that features are not grouped by TN on the CSR. WorldCom Mar. 24 *Ex Parte* Letter at 3-4. The record shows that the grouping of features on the CSR is a result of the way CSRs exist in Qwest's legacy systems. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 5. We note that the issue of the grouping of information in the CSR was addressed in the *Qwest-9 State Order*, and the Commission found that the grouping of feature information in the CSR did not prevent competitive LECs from accessing Qwest's OSS in the same time and manner as Qwest's retail operations. *See Qwest 9-State Order*, 17 FCC Rcd at 26335, para. 54; *see also* Department of Justice Evaluation filed in the Qwest II docket, WC Docket No. 02-189 at 11 & n.46. Moreover, although we do not rely on it, we note that a change request to enhance EDI to provide a CSR with TN orientation was introduced by AT&T on Feb. 27, 2003, and this change request has been scheduled for prioritization for possible inclusion in IMA release 14.0. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 5.

[183] WorldCom Comments at 12-14; WorldCom Reply at 5; WorldCom Mar. 24 *Ex Parte* Letter at 4.

[184] WorldCom Comments at 12.

[185] Additionally, Qwest notified WorldCom of this workaround when responding to WorldCom's change management request and notified other competitive LECs through an industry letter dated March 3, 2003. Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 (filed March 7B 2003) (Qwest Mar. 7B *Ex Parte* Letter).

[186] Qwest Feb. 14C *Ex Parte* Letter at 2; WorldCom Reply at 34.

[187] CALAs are geographic regions, used by Qwest systems, which may not be coextensive with the geographic area covered by a zip code. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 8. The record shows that Qwest requires competitive LECs to specify the CALA code instead of the zip code when submitting LSRs under certain circumstances. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 8. CALA codes are required when the zip code is not provided on the LSR or a zip code crosses multiple CALAs. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 8.

codes and that Qwest's documentation regarding the use of these codes has caused confusion for WorldCom and other competitive LECs.[188] Qwest's EDI documentation adequately explains to competitive LECs when CALA codes are required.[189] Information regarding CALA code requirements appears in the IMA Disclosure Document and in the PCAT.[190] We therefore find that the issues related to address rejects do not rise to the level of checklist noncompliance.

60. *Problems Relating to CSR Updates*. We reject WorldCom's argument that Qwest does not update CSRs in an accurate manner.[191] Specifically, WorldCom argues that it found CSRs with blocking options or features that WorldCom did not order, inaccurately updated billing addresses, line status improperly updated, and the service establishment date improperly updated.[192] The record shows that Qwest does accurately update CSRs.[193]

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188 WorldCom Apr. 10 *Ex Parte* Letter at 3; WorldCom Mar. 24 *Ex Parte* Letter at 5.

189 Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 7-8. *See also Qwest 9-State Order*, 17 FCC Rcd at 26335, para. 54 ("The standard for integration is not that a competitor must be able to integrate the system that it uses in another BOC region with the applicant's system; rather, only that competitors have access to a BOC's OSS in substantially the same time and manner as the BOC provides to its retail operations.").

190 Qwest Apr. 3A *Ex Parte* Attach. A at 8 n.42. *See also* n.112 *supra* for discussion of other address-related issues.

191 WorldCom Comments at 16-17; WorldCom Reply at 14-15; WorldCom Mar. 24 *Ex Parte* Letter at 6-8.

192 WorldCom Reply at 14-15; WorldCom Mar. 24 *Ex Parte* Letter at 6-8; WorldCom Apr. 10 *Ex Parte* Letter at 5.

193 Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 (filed March 11A 2003) (Qwest Mar. 11A *Ex Parte* Letter); Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 10-12. First, regarding WorldCom's complaint that 17 of the 83 CSRs it examined contained blocking options or features WorldCom did not order, we find that Qwest meets the requirement to provide competitive LECs with access to OSS in the "same time and manner" for analogous functions. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 10. The record shows that those 17 CSRs were updated properly and that certain blocking options were still on those CSRs because they were not properly removed by WorldCom. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 10. Even though WorldCom's requests to remove or order blocking options are processed manually, WorldCom has not demonstrated that this process is discriminatory. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 10. Although we do not rely on it, we take additional comfort that a pending change request, originated by AT&T, will enable competitive LECs to create an end state for adding and/or removing blocking options. Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 10. This change request is scheduled for prioritization for possible inclusion in IMA release 14.0. Qwest Apr. 3A *Ex Parte* Letter, Attach. A. at 10-11. Second, the fact that certain WorldCom CSRs contain end user, not WorldCom, address information is irrelevant because the address on the CSR does not affect where bills are sent. Qwest Mar. 11A *Ex Parte* Letter at 2. Third, Qwest does update the line status field where the line status field exists on the CSR. Qwest Mar. 11A *Ex Parte* Letter at 2; Qwest Apr. 3A *Ex Parte* Letter, Attach. A. at 11. The line status field, however, is not currently provided on UNE-P accounts in the Eastern region. Qwest Apr. 3A *Ex Parte* Letter, Attach. A. at 11. Fourth, the fact that all WorldCom CSRs do not contain service establishment dates is also irrelevant. The record shows that Qwest investigated the CSRs identified by WorldCom in its Reply and found that all active CSRs had service establishment dates, either at the account level or at the telephone number level. Qwest Mar. 11A *Ex Parte* Letter at 2. The only examples of CSRs without service establishment dates were for post-conversion retail accounts that had reached final status. Qwest Mar. 11A *Ex Parte* Letter at 2.

61. We reject WorldCom's argument that Qwest does not update CSRs in a timely manner. WorldCom argues that until Qwest updates a competitive LEC customer's CSR, WorldCom is unable to make changes to that customer's account.[194] As we found in the *Qwest 9-State Order*, we find that Qwest updates CSRs in a nondiscriminatory manner.[195] The record shows that Qwest uses very similar processes as competitive LECs to submit subsequent orders before the CSR has been updated.[196] Furthermore, Qwest has submitted evidence of subsequent LSRs submitted by 7 different competitive LECs via EDI and GUI.[197] Additionally, although we do not rely on it, the record shows that Qwest expects to implement, on April 7, 2003, an additional system capability in EDI version 12.0 to simplify the process for submitting subsequent LSRs for orders where the CSR has yet to be updated. Since Qwest updates CSRs for itself within the same timeframe as it updates CSRs for competitive LECs, we do not find WorldCom's arguments persuasive.

62. We also reject WorldCom's argument that Qwest requires competitive LECs to submit customer codes which may change on subsequent orders.[198] WorldCom maintains that Qwest advised WorldCom that the customer code was available from either the FOC or the SOC, but WorldCom has noticed a discrepancy in the customer code on FOCs and SOCs.[199] Qwest responds that it requires competitive LECs to submit customer codes only when there are multiple CSRs on the account, which rarely occurs.[200] The record shows that although there may be a discrepancy between the customer code on FOCs and SOCs, competitive LECs can obtain the current customer code by performing a CSR query.[201] Additionally, although we do not rely

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194 WorldCom Comments at 16-17; WorldCom Reply at 13; WorldCom Mar. 24 *Ex Parte* Letter at 8-9; WorldCom Apr. 10 *Ex Parte* Letter at 5-6.

195 *See Qwest 9-State Order*, 17 FCC Rcd at 26339, para. 59.

196 Qwest Reply at 39; Qwest Notarianni & Doherty OSS Reply Declaration, para. 31. The record shows that both Qwest Retail and competitive LECs must follow manual processes which vary only slightly in order to place subsequent orders prior to the CSR posting. Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 1 (filed March 18A 2003) (Qwest Mar. 18A *Ex Parte* Letter).

197 Qwest Apr. 3A *Ex Parte* Letter, Attach. A at 12 n.75.

198 WorldCom Reply at 13-14; WorldCom Mar. 24 *Ex Parte* Letter at 9-10. *See also* WorldCom Apr. 10 *Ex Parte* Letter at 6.

199 WorldCom Reply at 13-14; WorldCom Mar. 24 *Ex Parte* Letter at 9-10.

200 For example, in February 2003, only 4.6% of EDI 11.0 and 1.0% of EDI 10.0 pre-order transactions returned multiple CSRs. Qwest Apr. 3A *Ex Parte* Letter, Attach. A. at 13.n.78.

201 Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 at 1 (filed March 13A 2003) (Qwest Mar. 13A *Ex Parte* Letter). We note that WorldCom also contends that it should not need to access Qwest's CSR database to submit an account maintenance order particularly because WorldCom may need to pull multiple CSRs. WorldCom Mar. 24 *Ex Parte* Letter at 9.

on it, we note that Qwest plans to change its processes to ensure that the customer code does not change.[202]

2. UNE Combinations

63. In order to satisfy section 271(c)(2)(B)(ii), a BOC must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already combined elements, except at the specific request of the competing carrier.[203] We conclude, as did the state commissions, that Qwest meets its obligation to provide access to UNE combinations in compliance with Commission rules.[204] We reject WorldCom's generalized argument that Qwest misses regionwide metrics for EEL Installation Commitments and UNE-platform Centrex Installation Intervals.[205] Qwest meets the performance requirements for these metrics in each of the application states.[206]

3. Pricing of Unbundled Network Elements

a. Introduction

64. Checklist item two of section 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and

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[202] Qwest Mar. 13A *Ex Parte* Letter at 2.

[203] 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.315. Overturning a 1997 decision of the Eighth Circuit Court of Appeals, on May 13, 2002, the U.S. Supreme Court upheld sections 51.315(c)-(f) of the Commission's rules, which, subject to certain limitations, require incumbent LECs to provide combinations of unbundled network elements "not ordinarily combined in the incumbent LEC's network" and to "combine unbundled network elements with the elements possessed by the requesting telecommunications carrier." *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 539 (2002). In a prior decision, the Supreme Court upheld the Commission's authority to adopt sections 51.315(a)-(b) of the Commission's rules, which establish the general obligation of an incumbent LEC to provide combinations of network elements and require an incumbent LEC not to separate requested elements that it currently combines, except upon request. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 393-95 (1999). We note that other unbundled network elements are required pursuant to the checklist, but we discuss them in the context of other checklist items.

[204] *See, e.g.,* New Mexico Commission Comments at 35; Oregon Commission Comments at 11-12, 17 (recommending that the Commission approve Qwest's application in Oregon, but not specifically addressing UNE combinations); South Dakota Commission Comments at 5-6, 16 (recommending that the Commission find that Qwest has met the 14 point checklist, but not specifically addressing UNE combinations).

[205] *See* WorldCom Comments at 18, App. Declaration of Sherry Lichtenberg, Attach., OP-3D (Installation Commitments, Zone One, EELs), OP-4A (Installation Interval, D in MSA, UNE-P Centrex).

[206] *See generally* Appendices B, C, D, and E. *See also* Qwest Reply at 41-42 (arguing that regionwide performance results cannot overcome the fact that Qwest satisfies the performance measures in the three application states); Qwest Reply at 42-44, App. Tab 3, Reply Declaration of Michael G. Williams, paras. 5-11 (arguing that the regionwide metrics issues WorldCom singles out do not equate to competitively significant differences).

252(d)(1)" of the Act.[207] Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[208] Section 252(d)(1) provides that a state commission's determination of the just and reasonable rates for network elements, must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit.[209] Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements.[210]

65. In applying the Commission's TELRIC pricing principles in this application, we do not conduct a *de novo* review of a state's pricing determinations.[211] We will, however, reject an application if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."[212] We note that different states may reach different results that are each within the range of what a reasonable application of TELRIC principles would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here.

66. Based on the evidence in the record before us, we find that Qwest's UNE rates in New Mexico, Oregon and South Dakota are just, reasonable, and nondiscriminatory, and are in accordance with section 252(d)(1). Thus, Qwest's UNE rates in these states satisfy checklist item two.

67. Qwest has taken a similar approach to pricing issues as it did in the *Qwest 9-State Order* in that it made voluntary rate reductions in New Mexico, Oregon and South Dakota prior to filing its section 271 application. Those reductions were specifically calculated to produce rates that would enable those states to pass a benchmark comparison to rates in Colorado. In this section, we discuss the details of Qwest's rate proceedings in each state, as well as issues related

207 47 U.S.C. § 271(c)(2)(B)(ii).

208 47 U.S.C. § 251(c)(3).

209 47 U.S.C. § 252(d)(1).

210 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); 47 C.F.R. §§ 51.501-51.515 (2001). Last year, the Supreme Court upheld the Commission's forward-looking pricing methodology in determining the costs of UNEs. *Verizon Communications, Inc. v. FCC,* 122 S. Ct. 1646, 1679 (2002).

211 *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55 (citations omitted). *See also Sprint v. FCC*, 274 F.3d 549, 556 (D.C. Cir. 2001) ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.").

212 *Verizon Pennsylvania Order,* 16 FCC Rcd at 17453, para. 55 (citations omitted).

to the benchmarking process. We also discuss the two pricing challenges related to checklist item 2 that were made by a commenter.[213] Other pricing concerns that were raised by the parties are discussed below under the checklist item that covers that issue. Specifically, AT&T's complaints related to interconnection pricing in New Mexico and entrance facility rates in all three states are discussed under checklist items one and five, respectively. The final pricing related issue is raised by the Northwest Public Communications Council (NPCC) which contends that Qwest's section 271 application is not in the public interest in Oregon because Qwest has failed to reduce rates for pay telephone public access lines in compliance with a previous Commission order.[214] This is discussed in the public interest section.

b. Background

(i) New Mexico Proceedings

68. The New Mexico Commission, *sua sponte*, initiated a cost proceeding in 1998 to set permanent rates for UNEs consistent with TELRIC methodology.[215] In Phase I of that proceeding, the state commission set permanent rates for two-wire loops, switching, tandem switching, tandem-switched local transport, extension technology, common channel signaling access capability, DS-1 switched transport, DS-3 switched transport, STP port, and SS7 signaling.[216] The New Mexico Commission modified the Regional Loop Cost Analysis Program, submitted by Qwest, and the Hatfield Model, submitted by AT&T in the arbitration proceeding, in setting loop rates.[217] For UNEs other than the loop, the New Mexico Commission noted that no party challenged Qwest's cost estimates. Accordingly, the state commission concluded that the prices for these UNEs should be set at the rate proposed by Qwest, except that common costs should be reduced by 10 percent.[218] The New Mexico Commission also required Qwest to adopt

[213] Integra complains that Qwest seeks section 271 approval relying on rates that may be increased in a proceeding presently before the Oregon Commission and that current Oregon's UNE rates are based on old data. *See* section III.B.3.d., e., *infra*.

[214] NPCC Comments at 1.

[215] Qwest Application App. C, Vol. 2, Tab 1, *Consideration of the Adoption of a Rule Concerning Costing Methodologies*, Order, Docket No. 96-310-TC (July 15, 1998) (*New Mexico 1998 Costing Methodologies Order*) at 1-4. The New Mexico Commission has adhered to TELRIC standards even when the Commission's pricing rules were vacated by the United States Court of Appeals for the Eighth Circuit. *See Petition of American Communications Services, Inc., for Arbitration with U S West*, Docket No. 96-307-TC (Dec. 9, 1996) ("While the stayed portions of the Interconnection Order are not binding on the [New Mexico] Commission, the Commission is not precluded from adopting the costing and pricing theories and concepts in the Interconnection order . . . .").

[216] Qwest Application App. C, Vol. 2, Tab 1, *New Mexico 1998 Costing Methodologies Order* at 53-55. The New Mexico Commission subsequently modified the price for switching. Qwest Application App. C, Vol. 2, Tab 2, *In re Consideration of the Adoption of a Rule Concerning Costing Methodologies*, Order on Reconsideration, Docket No. 96-310-TC (Aug. 25, 1998).

[217] Qwest Application App. C, Vol. 2, Tab 1, *New Mexico 1998 Costing Methodologies Order* at 53.

[218] Id. at 54.

a three-zone deaveraged rate structure.[219] Subsequently, in Phase II, the New Mexico Commission set rates for non-recurring charges (NRCs), collocation, OSS, and certain other UNEs (e.g., four-wire loops, shared transport).[220] In a new proceeding initiated on October 17, 2000, the New Mexico Commission sought to update cost studies for OSS, collocation, shared transport, NRCs, UNE combinations, switching and other UNEs.[221] This new proceeding was divided into two phases, A and B. The state commission on August 27, 2002 issued a decision on interim rates in Phase A, and a decision on permanent rates is pending in Phase B.[222]

69. Prior to filing its section 271 application, Qwest filed a revised SGAT with the New Mexico Commission on August 30, 2002, that included reductions to loops and NRCs.[223] The new rates became effective on October 29, 2002, for competitive LECs purchasing service pursuant to the New Mexico SGAT or opting in to those rates under section 252(i).[224] Specifically, Qwest reduced rates for loops (including two wire and four wire for three deaveraged zones), sub loops and high capacity loops pursuant to its benchmark analysis of UNE rates in Colorado.[225] Qwest also reduced non-recurring charges for basic installation and coordinated installation based on a direct comparison with Colorado rates.[226] The New Mexico Commission recommended to the Commission that Qwest has complied with section 271 requirements and that its application should be granted to provide in-region interLATA services.[227]

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[219] Id. at 55-56.

[220] Qwest Application App. C, Vol. 2, Tab 3, *Consideration of the Adoption of a Rule Concerning Costing Methodologies*, Supplemental Order, Docket No. 96-310-TC (Dec. 31, 1998).

[221] Qwest Application App. C, Vol. 2, Tab 11, *Consideration of Costing and Pricing Rules for OSS, Collocation, Shared Transport, Non-Recurring Charges, Spot Frames, Combination of Network Elements, and Switching*, Procedural Order, Docket No. Utility Case 3495 (Oct. 17, 2000).

[222] Qwest Application App. I, Vol. 3a, Tab 89, *Consideration of Costing and Pricing Rules for OSS, Collocation, Shared Transport, Non-Recurring Charges, Spot Frames, Combination of Network Elements, and Switching*, Final Order for Phase A, Docket No. Utility Case 3495 (Aug. 27, 2002).

[223] Qwest Application App. A, Tab 27, Declaration of Jerrold L. Thompson (Qwest Thompson New Mexico Decl.), para. 36; New Mexico Commission comments at 42; Qwest Feb. 5 *Ex Parte* letter at 1.

[224] Qwest Application App. A, Tab 27, Qwest Thompson New Mexico Decl. at paras. 36-37.

[225] Id. at paras. 39-42. *See* section III.B.3.c., *infra*.

[226] Qwest Application App. A, Tab 27, Qwest Thompson New Mexico Decl. at paras. 47-48. *See* section III.B.3.c., *infra*.

[227] Qwest Application App. C, Vol. 1, Tab 19, *Qwest Corporation's Section 271 Application and Qwest Corporation's Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996; Consideration of Costing and Pricing Rules for OSS, Collocation, Shared Transport, Non-Recurring Charges, Spot Frames, Combination of Network Elements and Switching; Investigation into Unfiled Agreements Between Qwest Corporation and Competitive Local Exchange Carriers*, Final Order Regarding Compliance with (continued….)

(ii) Oregon Proceedings

70. The state commission in Oregon started to develop policies to encourage competitive entry when local competition was in its early stages, well before the 1996 Act and the establishment of Commission rules requiring access to unbundled network elements. The state commission initiated the process of unbundling telecommunications services into network "building blocks" in 1990.[228] Concluding that a new, cost-based approach to ratemaking was "essential to the existence of effective competition," the Oregon Commission convened telecommunications industry workshops almost every month from 1990 to 1993 to define and identify network building blocks and to develop cost principles based on an incremental cost methodology.[229]

71. A series of hearings were held in 1994-95 to determine the magnitude of unbundling and pricing, and in 1996, the Oregon Commission approved costs and prices for building blocks.[230] These building blocks were identified prior to the Commission's identification of UNEs, and consequently, the building blocks created by the Oregon Commission differed from UNEs in both terminology and in detail.[231] The Oregon building blocks were subsequently converted to UNEs with the agreement of competitive LECs, state commission staff, Verizon and Qwest.[232]

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Outstanding 271 Requirements., SGAT Compliance, Track A and Public Interest, Utility Case Nos. 3269, 3537, 3495 and 3750 (N.M. Public Regulation Commission, Oct. 8, 2002).

[228] Qwest Application App. C, Vol. 2, Tab 1, *Investigation into the Revenue Requirement and Rate Structure of Pacific Northwest Bell Telephone Company, dba U S West Communications,* Oregon Commission, Order No. 90-920, Docket No. UT 85 at 19-20 (June 27, 1990).

[229] *Id.* at 17. "Rates which reflect the incremental (or marginal) cost of service encourage better resource utilization by conveying accurate price signals to consumers. . . ." *Id.* at 16-17. The workshops produced findings that became Phase I of Docket UM 351 and culminated in the release of the Telecommunications Building Blocks Cost Report, Vol. 1, in July, 1993 (Oregon Telecommunications Cost Report). Representatives of AT&T, GTE Northwest (now Verizon), MCI, Pacific Telecom, Telephone Rate Payers for Cost-based and Equitable Rates, Oregon Commission staff and Qwest participated in these workshops. *Id.* at 2.

[230] Qwest Application App. A, Tab 2, Declaration of Judy Peppler (Qwest Peppler Oregon Decl.) at paras. 74-75. *See* Qwest Application App. I, Vol. 1, Tabs 483-84, *Investigation into the Cost of Providing Telecommunications Services,* Oregon Commission, Order No. 96-188, Docket No. UM 351 (July 19, 1996) (identifying building blocks to be offered), and Order Nos. 96-325 (Aug. 8, 1996) and 96-228 (Sept. 3, 1996).

[231] *See* 47 C.F.R. § 51.319. *E.g.,* the loop UNE was equivalent to the Oregon building blocks known as the Network Access Channel (NAC) and NAC Connection. Qwest Application App. I, Vol. 8, Tab 97, *Revised Tariff Sheets Filed by Qwest Corporation, formally known as U S West Communications, Inc., for Telecommunications Service. Advice No. 1808,* Oregon Commission, Order No. 00-481, Docket Nos. UT 148 and UM 963 at 2 n.2 (Aug. 30, 2000) (*Oregon Geographic Deaveraging Order*).

[232] Qwest Application App. I, Vol. 7, Tab 330, *Ascertaining the Unbundled Network Elements that must be Provided by Incumbent Local Exchange Carriers to Requesting Telecommunications Carriers Pursuant to 47 C.F.R. § 51.319,* Oregon Commission, Order No. 01-1106, Docket Nos. UT 138-39 Phase II at 1 ((Dec. 26, 2001). *See also* Qwest Application App. I, Vol. 7, Tab 240, *Investigation into Compliance Tariffs filed by U S West*
(continued....)

72. Several years before the 1996 Act was enacted, the Oregon Commission set network element prices based on a forward-looking, incremental cost methodology and rejected the use of historic, embedded costs.[233] The Oregon Commission required cost studies to assume investment in forward-looking, least cost technologies,[234] an approach consistent with TELRIC principles subsequently adopted by the Commission.[235] Shortly after the 1996 Act was passed, the Commission noted that the loop rates adopted by the Oregon Commission (and five other states) could serve as the basis for interim proxy rates so that states, in order to comply with the Act, could approximate forward-looking economic costs until approving their own cost studies.[236] Most recently, the Oregon Commission noted in its state 271 proceedings that after providing an opportunity for all interested parties to participate in determining UNE costs and rates, the state commission adopted "UNE prices substantially based on TELRIC principles advocated by AT&T."[237]

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Communications, Inc., Advice Nos. 1661, 1683, 1685, and 1690, Oregon Commission, Order No. 00-316 (revising Order No. 98-444), Docket Nos. UT 138-39 (June 19, 2000) (*Oregon Order No. 00-316*). The Oregon Commission established workshops to match building blocks to UNEs authorized by the Commission in 47 C.F.R. § 51.319, including identifying the appropriate prices applicable to those UNEs based on prices approved by Oregon Commission Order No. 97-239. *Oregon Order No. 00-316* at 4.

233 *E.g.*, the Oregon Telecommunications Cost Report identified seven cost principles that the Oregon Commission adopted Aug. 10, 1993 in Order No. 93-118. *See also Investigation into Compliance Tariffs filed by U S West Communications, Inc., Advice Nos. 1661, 1683, 1685, and 1690,* Oregon Commission, Order No. 98-444, Docket Nos. UT 138-39 at 43-44 (Nov. 13, 1998) (*Oregon Order No. 98-444*). The state commission adopted a Total Service Long Run Incremental Cost (TSLRIC) methodology "designed to compensate ILECs for efficiently incurred, forward-looking costs." *Id.* at 43.

234 *Oregon Order No. 98-444* at 43, 45; *see also* Oregon Telecommunications Cost Report at 12. The Oregon Commission cost principles required that cost studies "should not be driven by equipment selection choices that are influenced by the existing stock of equipment" but "should be based on a cost minimization approach with no constraints on the selection of current technology to serve the customers' demand for telecommunications services." Oregon Telecommunications Cost Report at 12.

235 *Local Competition First Report and Order*, 11 FCC Rcd at 15894, para. 792 (explaining that Oregon "used a standard that appears to be reasonably close to the forward-looking economic cost methodology" required under TELRIC methodology).

236 *Id.* at 15893-95, paras. 790-92. "[W]e recognize that, in some cases, it may not be possible for carriers to prepare, or for state commissions to review, economic cost studies within the statutory time frame for arbitration proceedings. Because reviewing and approving such cost studies takes time and because many states have not yet begun, or have only recently begun, to develop and examine such studies, it is critical for the near-term development of local competition to have proxies that provide an approximation of forward-looking economic costs and can be used by states almost immediately." *Id.* at para. 790.

237 Qwest Application App. C, Vol. 1, Tab 13, *Investigation into the Entry of Qwest Corporation, formerly known as U S West Communications, Inc., into In-Region InterLATA Services under Section 271 of the Telecommunications Act of 1996,* Oregon Commission, Workshop 4, Part 2 Findings and Recommendation Report of the Commission and Procedural Ruling, Docket No. UM 823 at 45 (June 3, 2002) (citing Dockets UM 351, UM 773, UM 844 and UT 138-39).

73. In several proceedings that occurred between 1996 and 2002, the Oregon Commission updated recurring UNE cost studies and rates.[238] The Oregon Commission in 1997 accepted the recurring cost models proposed by Qwest -- the Regional Loop Cost Analysis Model and the Switching Cost Model.[239] The Oregon Commission resolved a number of issues concerning non-recurring charges in 1998 and, having recently completed additional proceedings, is expected to issue a further order on non-recurring rates in 2003.[240] On August 30, 2000, the state commission geographically deaveraged statewide average loop prices by grouping wire centers into three rate zones.[241] A new cost proceeding to consider all current UNEs, including those for which no prices have been formally approved, is presently before the Oregon Commission.[242]

74. Prior to filing its section 271 application, Qwest voluntarily reduced certain recurring and non-recurring rates. It filed revised SGAT rates on December 3, 2002 that became effective as of January 22, 2003.[243] Qwest reduced its recurring shared transport rate pursuant to its benchmark analysis of UNE rates in Colorado.[244] Qwest also reduced loop installation non-recurring rates based on a direct comparison with Colorado rates.[245] In addition, recurring vertical feature rates were reduced to zero.[246] The Oregon Commission has provided its "affirmative recommendation" to the Commission that Qwest has complied with section 271 requirements and that its application should be granted to provide in-region interLATA services.[247]

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[238] Docket No. UM 773 was opened in 1996 to update cost studies in Docket No. UM 351. Prices based on these revised UM 773 costs were approved in Docket No. UM 844 on June 25, 1997. On Dec. 26, 2001, the Oregon Commission in Docket No. UM 138-39, Order No. 01-1106, approved a stipulated agreement to translate Oregon's building blocks into UNEs authorized by the Commission and to identify their rates. On May 28, 2002, certain other UNE costs and rates were adopted in Docket No. UM 773, Order No. 02-355.

[239] Qwest Application App. A, Tab 28, Declaration of Jerrold L. Thompson, para. 9 (Qwest Thompson Oregon Decl.).

[240] *Oregon Order No. 98-444* in Docket No. UT 138. An order in Phase III of this docket is pending.

[241] *See generally Oregon Geographic Deaveraging Order.*

[242] Qwest Application App. I, Vol. 6, Tab 33, *Investigation to Review Costs and Establish Prices for Unbundled Network Elements provided by Qwest Corporation,* Oregon Commission, Order No. 02-602, Docket No. UM 1025 (Sept. 3, 2002).

[243] Letter from David L. Sieradzki, Counsel for Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-11 (Feb. 5, 2003). *See also* Qwest Thompson Oregon Decl., para. 19.

[244] *Id.* at paras. 19-21. *See* section III.B.3.c., *infra.*

[245] *Id.* at para. 27. *See* section III.B.3.c., *infra.*

[246] *Id.* at para. 19.

[247] Qwest Application App. K, Vol. 1, Tab 553, *Investigation into the Entry of Qwest Corporation, formerly known as US West Communications, Inc., into In-Region InterLATA Services under Section 271 of the* (continued....)

(iii) South Dakota Proceedings

75. Qwest's rates for UNEs and interconnection in South Dakota grew out of a 1997 order by the state commission in an arbitration proceeding filed by AT&T.[248] In the comprehensive proceeding, the state commission set prices for loops, collocation and switching, and it rejected Qwest's proposed additional charges for vertical features.[249] The South Dakota Commission found deficiencies in both the Hatfield Model submitted by AT&T and WorldCom, and Qwest's Regional Loop Cost Analysis Program for determining UNE prices.[250] Citing significant flaws in the Hatfield Model, the state commission decided it was more reliable to adopt Qwest's cost models and make adjustments to inputs.[251] On reconsideration, the South Dakota Commission reaffirmed that "its decision to use [Qwest's] TELRIC cost studies, with modifications, was reasonable" and "more accurately reflected the costs incurred by [Qwest]."[252] The South Dakota Commission presently has a proceeding before it to determine UNE rates based on Qwest's updated cost studies.[253]

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Telecommunications Act of 1996, Oregon Commission, Final Recommendation Report of the Commission, Docket No. UM 823 at 20 (Aug. 19, 2002). *See also* Oregon Commission Comments at 2.

[248] Qwest Application App. C, Vol. 2, Tab 1, *Interconnection Contract Negotiations Between AT&T Communications of the Midwest, Inc. and U S West Communications, Inc. Pursuant to 47 U.S.C. Section 252,* South Dakota Commission, Findings of Fact, Conclusions of Law and Order: Compliance Filing Ordered, Docket No. TC96-184 (Mar. 20, 1997) (*South Dakota Arbitration Order*).

[249] *South Dakota Arbitration Order* at paras. 115-124. Parties filed written testimony in support and in rebuttal, hearings were held where witnesses could be cross-examined, and parties also filed post-hearing briefs, including proposed findings of fact and conclusions of law. *Id.* at 1.

[250] *Id.* at paras. 106-07.

[251] *Id.* at paras. 93-104, 108-14. Qwest Application App. C, Vol. 2, Tab 2, *Interconnection Contract Negotiations Between AT&T Communications of the Midwest, Inc. and U S West Communications, Inc. Pursuant to 47 U.S.C. Section 252,* South Dakota Commission, Findings of Fact and Conclusions of Law Issued March 20, 1997 Modified; Compliance Filing Ordered, Docket No. TC96-184 at 2 (Aug. 13, 1997) (*South Dakota Arbitration Reconsideration Order*).

[252] *South Dakota Arbitration Reconsideration Order* at 2. The South Dakota Commission found that the rates, terms and conditions in its arbitration order should be considered interim and a new docket should be opened to set permanent prices based on new cost studies. *Id.*

[253] Qwest Application App. I, Vol. 2, Tab 1, *Determining Prices for Unbundled Network Elements (UNEs) in Qwest Corporation's Statement of Generally Available Terms (SGAT),* South Dakota Commission, Petition of Qwest Corporation for Initiation of Cost Docket, Docket No. TC01-098 (July 26, 2001). Qwest recommends that the state commission should find the prices it established in its AT&T arbitration proceeding to be permanent TELRIC-based rates. The present proceeding also considers UNEs not previously addressed by the state commission. *Id.* at 1-3.

76. The state commission also held proceedings in 2000 to evaluate competing proposals by AT&T and Qwest to geographically deaverage loop rates.[254] It found that Qwest's deaveraging proposal splitting the state into three zones was "consistent with the assumption behind deaveraged rates: namely, that costs in more densely populated areas will be lower than costs in less densely populated areas."[255]

77. Prior to filing its section 271 application, Qwest voluntarily reduced certain recurring and non-recurring rates. It filed revised SGAT rates on December 12, 2002, which became effective on February 10, 2003, and which will be reflected on competitive LECs' bills within 30-60 after the effective date.[256] Qwest reduced deaveraged loop rates and switching rates pursuant to its benchmark analysis of UNE rates in Colorado.[257] Qwest also reduced loop installation non-recurring rates based on a direct comparison with Colorado rates.[258] The South Dakota Commission found in a series of orders that Qwest complies with section 271 requirements, including the pricing of UNEs in checklist item two.[259] The state commission also found that Qwest's entry into the interLATA market in South Dakota is in the public interest and recommended the approval of Qwest's section 271 application.[260]

c. Benchmark Analysis

78. Qwest asserts that the UNE rates set by the New Mexico, Oregon and South Dakota Commissions comply with TELRIC.[261] Qwest further asserts, however, that in an effort to expedite our consideration of its application, it voluntarily reduced some UNE rates in each of these three states with the specific intent of passing a benchmark comparison to rates in Colorado.[262] We need not decide whether the state proceedings produced TELRIC-compliant

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254 *Establishment of Different Rates for Interconnection and Unbundled Network Elements in At Least Three Geographic Areas for Nonrural Telecommunications Companies,* South Dakota Commission, Findings of Fact and Conclusions of Law; Notice of Entry of Order, Docket No. TC99-106 (May 1, 2000).

255 *Id.* at para. 22. The state commission ordered the following deaveraged loop rates: $17.01 in zone 1, $18.54 in zone 2, and $24.37 in zone 3. *Id.* at para. 23.

256 Qwest Application App. A, Tab 29, Declaration of Jerrold L. Thompson (Qwest Thompson South Dakota Decl.) at paras. 15-16. The revised SGAT is dated Dec. 12, 2002.

257 *Id.* at paras. 18-23. *See* section III.B.3.c., *infra*.

258 *Id.* at para. 25. *See* section III.B.3.c., *infra*.

259 Qwest Application App. A, Tab 3, Declaration of Larry Toll (Qwest Toll South Dakota Decl.) at paras. 4, 48. Qwest Application at 12. *See also* Qwest Application App. C, Vol. 1, Tabs 1-9, *Analysis of Qwest Corporation's Compliance with Section 271(c) of the Telecommunications Act of 1996,* South Dakota Commission, Orders, Docket No. TC01-165 (Dec. 18, 2001 – Nov. 22, 2002). *See also* South Dakota Commission Comments at i.

260 South Dakota Commission Reply at 4 (citing final order issued Feb. 26, 2003, in the state 271 proceeding).

261 *See* Qwest Application at 149.

262 *Id.* at 149-50. Qwest submitted revised SGATs reducing UNE rates in New Mexico on Aug. 30, 2002; in Oregon on Dec. 3, 2002, and in South Dakota on Dec. 12, 2002. The revised SGATs became effective in New (continued....)

rates because we find that Qwest's current, voluntarily reduced rates benchmark to the rates in Colorado.

79. None of the parties has challenged Qwest's benchmark analysis for any of the three states, including its decision to use Colorado rates as the basis for the comparison. Nonetheless, we perform our own benchmark analysis of Qwest's New Mexico, Oregon and South Dakota UNE rates to determine whether those rates comply with TELRIC and satisfy checklist item two. To determine whether a comparison is reasonable, the Commission will consider whether the two states have a common BOC; whether the two states have geographic similarities; whether the two states have similar, although not necessarily identical, rate structures for comparison purposes; and whether the Commission has already found the rates in the comparison state to be TELRIC-compliant or an appropriate benchmark.[263] Applying this standard to Qwest's rates in New Mexico, Oregon and South Dakota, we find that Colorado is a permissible state for UNE rate comparison purposes here.[264]

80. Having determined that the Colorado rates are appropriate rates for the benchmark comparison, we compare Qwest's New Mexico, Oregon and South Dakota rates to the Colorado rates under our benchmark analysis, using our standard assumptions for weighting rates.[265] As shown in the tables below, we compare the difference between each applicant state's rates and Colorado's rates to the difference between each applicant state's costs and Colorado's costs according to the Synthesis Model.[266] We compare rates and costs for loops and for aggregated non-loop elements.[267] Because each applicant state's rates do not exceed rate levels that result from an application of the appropriate cost differential to Colorado's rates, we find that Qwest's rates in New Mexico, Oregon and South Dakota satisfy our benchmark analysis.

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Mexico on Oct. 29, 2002, in Oregon on Jan. 22- 23, 2003 and in South Dakota on Feb. 10, 2003. *See* Letter from David Sieradzki, Counsel for Qwest, to Ms. Marlene H. Dortch , Secretary, Federal Communications Commission, WC Docket No. 03-11 at 1 (Feb. 5, 2003).

[263] *See Verizon New Jersey Order*, 17 FCC Rcd at 12295-96, para. 49; *Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 38; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20746, para. 56; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 63. In the *Verizon Pennsylvania Order*, the Commission found that several of the criteria should be treated as indicia of the reasonableness of the comparison. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 64; *see also Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 28; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

[264] Colorado shares geographic similarities, is served by the same BOC, has a similar rate structure, and the Commission has already found Colorado's rates to be TELRIC-compliant on their own merits. *See Qwest 9-State Order* at 26467-69, paras. 302, 305.

[265] *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 65 (describing our standard assumptions).

[266] The Commission "cannot rely on the [synthesis] model to provide guidance in examining non-recurring rates, because it does not examine these costs." *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457 n.248.

[267] We note that although the Commission only benchmarks non-loop elements in the aggregate, Qwest's rates for switching and transport would independently satisfy a benchmark test.

Loop Analysis		
State vs. Colorado	Rates Percentage Difference	Synthesis Model Costs Percentage Difference
New Mexico vs. Colorado	17%	17%
Oregon vs. Colorado	(5%)	(3%)
South Dakota vs. Colorado	19%	19%

Non-Loop Analysis		
State vs. Colorado	Rates Percentage Difference	Synthesis Model Costs Percentage Difference
New Mexico vs. Colorado	(32%)	2%
Oregon vs. Colorado	(13%)	(10%)
South Dakota vs. Colorado	(21%)	(2%)

81. These conclusions demonstrate that Qwest's New Mexico, Oregon and South Dakota UNE rates fall within a range of rates that a reasonable application of TELRIC would produce. Accordingly, we find that Qwest has demonstrated that its New Mexico, Oregon and South Dakota UNE rates satisfy the requirements of checklist item two.

d. Temporary Rates in Oregon

82. Integra expresses concern that Qwest relies on Oregon UNE loop rates in its section 271 application that could only be in effect temporarily. Specifically, Integra asserts that Qwest is playing "bait and switch" with the rates for UNE loops in Oregon by obtaining section 271 approval on the basis of current loop rates that it has proposed to raise to non-TELRIC levels in an ongoing Oregon UNE rate case.[268] Integra notes that the Commission, in its recent *Qwest 9-State Order,* denied a competitive LEC's challenge to UNE rates in Utah based on a claim that Qwest had merely made a temporary rate reduction (to meet a benchmark analysis to rates in Colorado) for purposes of obtaining section 271 approval.[269] Integra attempts, however, to distinguish the Utah situation by arguing that Qwest there sought to raise UNE rates in a state proceeding only back to their previous level, while in Oregon, Qwest is seeking to "*substantially increase* UNE loop rates that barely meet the Commission's benchmark test now."[270] Integra further argues that while the Commission's section 271 conflict and enforcement process[271] is adequate to deal with future, potential "backsliding" by an incumbent LEC, Qwest's Oregon rate

[268] Integra Comments at 1.

[269] *Id.* (citing *Qwest 9-State Order*, 17 FCC Rcd at 26469, para. 306).

[270] Integra Comments at 3 (emphasis in original).

[271] 47 U.S.C. § 271 (d)(6)(A)-(B).

proposal is so onerous that the Commission should deal with it now.[272] Finally, Integra argues that if the Commission decides to grant Qwest's section 271 application, Qwest should not be allowed to raise its UNE loop rates in Oregon "for some minimum time."[273] Qwest responds that the Commission has held that a pending rate investigation does not render the rates submitted with a section 271 application impermissibly temporary.[274]

83. We have consistently held that in similar factual circumstances, where the incumbent LEC had filed a section 271 application, while pursuing an ongoing UNE rate proceeding, we perform our analysis on the rates before us—the rates the LEC submitted in its section 271 application.[275] We do not agree with Integra that the situation in Oregon warrants a different approach. If we find the rates Qwest submitted in Oregon to be TELRIC-compliant, Qwest has met its obligation to price UNE loops in compliance with checklist item two.

84. We cannot now assume that the proposed UNE loop rates that Qwest has filed with the Oregon Commission are not cost-justified, even though they may exceed the rates on which Qwest here relies. We also cannot assume that the Oregon Commission would adopt the proposed new rates if Qwest were not able to justify them in accordance with TELRIC principles. In *WorldCom v. FCC,* the D.C. Circuit Court made clear that we may rely upon the state commission to set UNE rates."[276] We find that the Oregon Commission has demonstrated its commitment to setting UNE rates at TELRIC levels, and we are confident that it will modify rates appropriately in the future based on the evidence before it. Section 271(d)(6)(B) of the Act, however, provides a mechanism for an interested party to challenge any UNE rates as not being TELRIC-based.[277] Under section 271(d)(6)(A), the Commission has the authority to review any future Qwest rate increase, including the one now pending in Oregon. Should we determine that any such increase is not TELRIC-based in compliance with checklist item two, section

[272] Integra Comments at 1, 5. Integra states that Qwest seeks to raise loop rates to a "secret" level. Integra asserts that it cannot say how much Qwest proposes to increase its loop rates because Qwest sought and was granted a protective order in the ongoing UNE rate proceeding which permits Qwest to keep the UNE cost studies it filed in that proceeding confidential. Qwest denies that either the proposed rates or Qwest's TELRIC cost study are secret. Qwest Reply Comments, Attach. Tab 4, Joint Reply Declaration of Jerrold L. Thompson and Thomas R. Freeberg, para. 24 (Qwest Thompson/Freeberg Reply Decl.). Qwest further asserts that it has provided Integra a copy of the TELRIC studies and the results. *Id.* at para. 25.

[273] Integra Comments at 5.

[274] Qwest Reply at 49. *See also* Qwest Thompson/Freeberg Reply Decl., paras. 24-26. Qwest also asserts that the Oregon rate proceeding is likely to be lengthy and that a decision is not expected before mid- to-late 2004. *Id.* at para. 26.

[275] *See, e.g., Qwest 9-State Order*, 17 FCC Rcd at 26469-70, para. 307; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9066-67, para. 97 (citing *Verizon Rhode Island Order*, 17 FCC Rcd at 3317, para. 31).

[276] *WorldCom v. FCC*, 308 F.3d 1, 8 (DC Cir. 2002).

[277] 47 U.S.C. § 271 (d)(6)(B).

271(d)(6)(A) empowers the Commission to suspend or revoke Qwest's section 271 authority or impose other penalties.[278]

e. Old Rates in Oregon

85. Integra also asserts that Oregon's current UNE rates are based on old data.[279] As the D.C. Circuit Court stated in *WorldCom v. FCC,* we may rely upon the state commission to set UNE rates, and "the mere age of a rate doesn't render the FCC's reliance on it unreasonable."[280] Furthermore, the Commission has previously noted that the issue of outdated data is not particularly relevant to rates where the Commission applies its benchmark analysis, as is the case here.[281] We find that Integra does not present any evidence that Qwest's UNE loop rate in Oregon is so outdated that our reliance on it is unreasonable.

IV. OTHER CHECKLIST ITEMS

A. Checklist Item 1 – Interconnection

1. Specific Interconnection Issues

86. Section 271(c)(2)(B)(i) requires a BOC to provide equal-in-quality interconnection on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of sections 251 and 252.[282] Based on our review of the record, we conclude, as did each state commission,[283] that Qwest complies with the requirements of this checklist item.[284] In reaching this conclusion, we have examined Qwest's performance in

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[278] 47 U.S.C. § 271 (d)(6)(A).

[279] Integra Comments at 3 (stating that Oregon UNE rates are based on "input gathered between 1993 and 1997, when competitive interconnection was in its infancy.").

[280] *WorldCom v. FCC,* 308 F.3d 1, 8 (DC Cir. 2002).

[281] *Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization To Provide In-Region, InterLATA Services in California,* WC Docket No. 02-306, Memorandum Opinion and Order, 17 FCC Rcd 2560, 25665, para. 34.

[282] 47 U.S.C. § 271(c)(2)(B)(i); *see also* Appendix K at paras. 17-24.

[283] New Mexico Commission Comments at 34; Oregon Commission Comments at 11; South Dakota Commission Comments at 16.

[284] Qwest Application App. A., Tab 5, Declaration of Thomas R. Freeberg, paras. 13-82 (Qwest Freeberg-Interconnection Decl.). We also conclude that Qwest provides legally binding terms and conditions for collocation in its interconnection agreements and SGATs. *See* New Mexico SGAT §8, Oregon SGAT §8, and South Dakota SGAT § 8; *see also* Qwest Application App. A., Tab 6, Declaration of Margaret S. Bumgarner (Qwest Bumgarner-Collocation Decl.).

providing collocation and interconnection trunks to competing carriers, as we have done in prior section 271 proceedings.[285]

87. *Interconnection Terms*.[286] The City of Portland asserts that Qwest's refusal to interconnect with the City of Portland, despite its existing approved interconnection agreement with Qwest, is in violation of checklist item 1.[287] The City of Portland further asserts that, accordingly, Qwest should not reference this interconnection agreement in its application.[288] Qwest claims that the City of Portland's interconnection agreement itself is the subject of an arbitration proceeding in Oregon, and that Qwest included this agreement in an effort to provide the Commission a complete listing of its filed interconnection agreements with the application states.[289]

88. This dispute is currently before the American Arbitration Association for arbitration. We find, and the City of Portland acknowledges in part, that the dispute regarding the City of Portland's interconnection agreement will be more appropriately resolved through the ongoing arbitration, or the section 208 complaint process, than in a section 271 proceeding.[290] Furthermore, it appears that the operating status of the City of Portland, rather than any particular interconnection access, terms or rates, is in dispute.[291] Therefore, we find that Qwest's

[285] *See Qwest 9-State Order*, 17 FCC Rcd at 26474, para. 312 (citing, e.g., *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9133-9137, paras. 201-206; *Verizon Massachusetts Order*, 16 FCC Rcd at 9092-95, 9098, paras. 183-87, 195). We find, based on the record, that Qwest's performance for interconnection satisfies its statutory obligations regarding interconnection quality and timeliness. *See* 47 U.S.C. § 271(c)(2)(B)(i). *See also* Qwest Williams-Performance Measures Decl., paras. 72-91.

[286] AT&T claims that Qwest's flat-rated and non-distance sensitive entrance facility rate for interconnection does not reflect the way costs are incurred. *See* AT&T Wilson Decl., paras. 9-19. We address AT&T's argument in our discussion of unbundled local transport under checklist item 5 below.

[287] *See* City of Portland Comments at 4-5, 7. The City of Portland also alleges that Qwest's refusal of interconnection or access to Qwest's network violates checklist items 2, 4, and 5. *See id.* at 5-7. In addition, the City of Portland states that it has obtained authorization from the Oregon Commission to act as a CLEC and that it is entitled to purchase UNEs, trunking and other interconnection products and services. *See id.* at 2.

[288] *See* City of Portland Comments at 4-5, 7. The City of Portland argues that Qwest made the reference to support the proposition that Qwest's local network is open and accessible to competitors. *See id.* at 7. Qwest referenced the interconnection agreement between Qwest and the City of Portland as one of the interconnection agreements that obligates Qwest to provide the item in a manner that complies with the statute and with the Commission's rules, policies, and precedents regarding that item. *See* Qwest Application at 26-27. "Qwest relies on these agreements and the other interconnection agreements filed with the State Commissions, in addition to its SGAT, to establish checklist compliance." Qwest Application at 27 n.24.

[289] *See* Qwest Reply at 57-58.

[290] *See* City of Portland Comments at 7. *See also, e.g., Verizon Pennsylvania Order*, 16 FCC Rcd at 17480-81, para. 113.

[291] *See* City of Portland Comments at 6, 7 (stating that Qwest claims, among other things, that the City of Portland is not a telecommunications carrier and that the City of Portland is not providing telecommunications services); Qwest Application, App. N, Oregon, Vol. 5a, Tab 5 (Complaint in City of Portland v. Qwest, filed in Docket No. IC (continued….)